Supreme Court, U.S.
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No. 94-1200

In The

Supreme Court of the United States

October Term, 1994

HERMAN WILLIAMS,

Petitioner,

v.

THE CITY OF GRANITE SHOALS, TEXAS,

Respondent.

Petition For Writ of Certiorari
To The Supreme Court of Texas

BRIEF IN OPPOSITION

DIANE C. VAN HELDEN
BARISH & VAN HELDEN
1409 West Sixth Street
Austin, Texas 78703
(512) 477-9058
(512) 477-9061 (Telecopier)

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

Does this Court have jurisdiction to entertain a petition for writ of certiorari seeking review of the denial of an application for writ of error to the Texas Supreme Court where Petitioner failed to present a federal question for decision in the state courts and where the decision of the federal question was not necessary to the determination of the cause?

Is Article 1, Section 10, clause 1 of the United States Constitution implicated where a contract is construed so that it is capable of performance and not void *ab initio* under the settled law of the State of Texas?

Is Article I, Section 10, clause 1 of the United States Constitution (the "contract clause") implicated where no legislation has been enacted after the date of formation of a contract?

Is Article I, Section 10, clause 1 of the United States Constitution (the "contract clause") implicated where the contract is impaired not by the result of legislation enacted after its formation but by judicial interpretation of the terms of the employment contract to make it possible of performance?

LIST OF PARTIES

PETITIONER:

Herman Williams

COUNSEL FOR PETITIONER:

Margaret D. Kennedy, Esq.
312 West 12th Street
Suite 307
Austin, Texas 78701
(512) 480-8300

RESPONDENT:

The City of Granite Shoals, Texas

COUNSEL FOR RESPONDENT:

Diane C. Van Helden
BARISH & VAN HELDEN
1409 West Sixth Street
Austin, Texas 78703
(512) 477-9058

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No. 94-1200

In The

Supreme Court of the United States

October Term, 1994

HERMAN WILLIAMS,

Petitioner,

v.

THE CITY OF GRANITE SHOALS, TEXAS,

Respondent.

Petition For Writ of Certiorari To The Supreme Court of Texas

BRIEF IN OPPOSITION

Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari to review the denial of Petitioner's Application for Writ of Error to the Supreme Court of Texas of the judgment rendered on March 2, 1994, by the Court of Appeals for the Third District of Texas.

OPINIONS BELOW

Respondent relies upon Petitioner's recitation of the opinions below.

JURISDICTION

This Court lacks jurisdiction under 28 U.S.C.A. § 1257 (West 1993) as asserted by Petitioner. Neither the Texas Supreme Court nor the Court of Appeals for the Third District of Texas were presented a federal question for review and their decisions are based exclusively on settled Texas law regarding the construction of contracts.

STATEMENT OF THE CASE

Petitioner accurately recites the proceedings in the Texas courts. Respondent supplements Petitioner's Statement of the Case only to point out that no federal question was presented at any stage of the proceedings and was not determinative of the case below.

Petitioner's suit went to trial on his Second Amended Original Petition. Therein, he presents only state common law and Texas Constitutional claims. Only petitioner's breach of contract claim was submitted to the jury, his other claims having been decided adversely to him in earlier rulings.

Respondent appealed the denial of its Motion for Judgment *Non Obstante Veredicto* to the Texas Court of Appeals, and the only matter raised by Cross-Appeal was Petitioner's objection to the trial court's refusal to submit to the jury his requested questions concerning his Texas Constitutional claim. App. 1-3. No mention of a federal contract clause argument is made in Petitioner's Motion for Rehearing. App. 4-6.

On application for writ of error to the Texas Supreme Court and in his Motion for Rehearing therein, Petitioner relied exclusively on state law arguments. App. 7-9. The first mention of Article I, Section 10, clause 1 of the United States Constitution comes in William's Petition for Writ of Certiorari in this Court.

REASONS TO DENY THE PETITION

I.

The Court is without jurisdiction to entertain the Petition for Writ of Certiorari as the Petitioner wholly failed to raise a federal question in the courts below and the Texas Supreme Court did not render a judgment or decree in which the issue of whether the lower court's construction of a contract for employment violated the contract clause, Article I, Section 10, clause 1 of the United States Constitution.

This Court lacks jurisdiction under 28 U.S.C.A. § 1257, because the Texas Supreme Court did not consider the federal question of whether the construction given Petitioner's employment contract violated the prohibition that States may not pass laws which impair the obligation of contracts. The issue was never before the Texas courts which considered Petitioner's case.

A. Williams has not shown and cannot show a timely, properly raised federal question.

Rule 14.1(h) of the Supreme Court Rules requires that a federal question be "timely and properly raised so as to give this Court jurisdiction to review the judgment on a

writ of certiorari." Williams does not specify or even mention in his Petition at what stage of the proceedings in the Texas courts he raised his contracts clause argument. Nor does he suggest how these courts passed on this argument or point the Court to the specific parts of the record in which his argument is brought to the attention of the Texas courts. The reason he does not is that the issue is first raised in his Petition for Writ of Certiorari.

Section 1257 jurisdiction is dependent on an affirmative showing from the record that a federal question was "presented for decision to the highest state court having jurisdiction" and that that Court's decision of the federal question was "necessary to the determination" of the case. *Honeyman v. Hanan*, 300 U.S. 14, 18 (1937). Neither requirement is met by Petitioner who relies on the assertion that this Court has "jurisdiction to review the judgment of the Supreme Court of the State of Texas pursuant to 28 U.S.C. § 1257" regardless of whether the federal question was raised or was determinative of the outcome of the case. Petition, p. 1.

Having failed to raise the federal question in the Texas Supreme Court which he now seeks to have this Court determine, Williams' Petition should be dismissed for want of jurisdiction.

B. Williams has not shown and cannot show that a federal question was adjudicated below as the decision of the Texas Supreme Court rested solely on state law.

The Third Court of Appeals sets out the basis for its reversal of the trial court's judgment for Petitioner at

pages 6-10 of its opinion (Appendix B to Petition). Because a construction of Williams' contract to require "cause" for its termination "formed an impermissible restraint on the city council's governmental functions" (p. 10), the construction urged by Petitioner would render the contract void *ab initio*. A Texas governmental body retains exclusive control over governmental functions and any effort to contract them away is unconstitutional and void. *Clear Lake City Water Authority v. Clear Lake Utils. Co.*, 549 S.W.2d 385, 391 (Tex. 1977).

The Court of Appeais does not address any federal question, because it was not presented with any. Brief in Opposition, App. 1-9. Its reversal of the trial court judgment rests exclusively on Texas law. Petitioner did not raise the contracts clause argument before the Texas Supreme Court (*see* Brief in Opposition, Appendices D and E), and the Supreme Court's denial of Petitioner's Application for Writ of Error by implication can only be based on Texas law. In fact the construction of Petitioner's employment contract, to give it effect rather than to void it, suggests that there has been no impairment of the contract.

II.

Article I, Section 10, clause 1's prohibition on a State's passing of laws which impair the obligation of contracts is not implicated in this case in that the Texas courts' construction of William's employment contract with the City of Granite Shoals made the contract possible of performance instead of void as violating public policy.

For the reasons stated in Section I, B. *supra*, Petitioner's contract has not been impaired but instead has been given effect and made possible of performance by the Texas courts. It should be further noted that a governmental entity created by the state has the power, within the constraints of the State Constitution, to create or abolish public offices, as well as to change the duties of such offices and shorten or lengthen the terms of office where the performance of governmental functions is concerned. Texas law provides that both the hiring and the firing of city employees is a governmental function, *City of Dallas v. Moreau*, 718 S.W.2d 776, 779 (Tex. App. – Corpus Christi 1986, writ ref'd n.r.e.), as well as is the operation of a police department, *Cronen v. Nix*, 611 S.W.2d 651, 653 (Tex. Civ. App. – Houston [1st Dist.] 1980, writ ref'd n.r.e.). This fundamental authority of governmental entities has long been recognized by this Court despite challenges based on the contract clause contained in Article I of the United States Constitution. *Higginbotham v. City of Baton Rouge, La.*, 306 U.S. 535, 539 (1939).

III.

Article I, Section 10, clause 1 of the United States Constitution (the "contract clause") is not implicated where no legislation has been enacted after the date of formation of a contract.

IV.

Article I, Section 10, clause 1 of the United States Constitution (the "contract clause") is not implicated where the contract is impaired not as a result of legislation but by judicial interpretation of the terms of the employment contract to make it possible of performance.

The facts of this case show that Petitioner does not suggest that any legislation was enacted after the formation of his employment contract with the City of Granite Shoals. Rather, Petitioner suggests that the construction of his contract to give it effect and to make it possible of performance under settled Texas law somehow violates the contract clause. Petitioner has presented the following question to this Court: "Whether the laws of Texas, *as interpreted by the state courts*, violate Article I, Section 10 of the United States Constitution."

In dismissing for want of jurisdiction the Petition in *New Orleans Waterworks Company v. Louisiana Sugar Refining Company*, 125 U.S. 18 (1887), this Court recognized that there is no jurisdiction where a contract clause impairment is suggested unless a contract has been impaired by a law of a State, as opposed to " . . . the decisions of its courts, or the acts of its administrative or executive boards or officers, or the doings of corporations or individuals." *Id.* at 30. Petitioner's complaint relates exclusively to the construction of the Texas courts which

gave effect to his employment contract by construing it not to require "cause" for termination. His complaint is not that any legislation was enacted following formation of the contract, but is rather with the construction accorded by the courts of Texas to give the contract effect.

This Court has recognized that one legislative body cannot by contract limit the powers of a successor legislative body or enter into contracts which "bargain away" the police powers of a State. *United States Trust Co. of New York v. New Jersey*, 431 U.S. 1, 23 (1977). Further, it recognizes that laws in existence at the time a contract is entered into are read into the contract as are the "essential attributes of sovereign power". *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398, 435 (1934). The holding of the Texas Court of Appeals for the Third District acknowledges no more and no less. The governmental function at issue in this case is clearly one of the reserved powers of the State, being a governmental function. Petitioner's reliance on this Court's holding in *United States Trust Co. of New York v. New Jersey, supra*, is misplaced. There is no similarity in the factual circumstances of this case to that of the *Trustees of Dartmouth College v. Woodward*, 4 U.S. (4 Wheat. 518) 461 (1819) which involved legislation enacted subsequent to the grant of a charter which legislation materially altered the charter.

Petitioner does not complain of any law enacted by The City of Granite Shoals or any other legislative body which impaired his contract. Without such, the contract clause is not implicated, and no jurisdiction exists to review the decision of the Texas Supreme Court in denying Petitioner's Application for Writ of Error from the

Third Court of Appeals' holding reversing the judgment of the trial court in this case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DIANE C. VAN HELDEN
BARISH & VAN HELDEN
Attorneys at Law
1409 West Sixth Street
Austin, Texas 78703
(512) 477-9058
(512) 477-9061 (telecopier)

Attorneys For Respondent
The City of Granite Shoals, Texas

App. 1

NO. 03-93-00263-CV

IN THE

COURT OF APPEALS

FOR THE

THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

AT AUSTIN

THE CITY OF GRANITE SHOALS,

Appellant

VS.

HERMAN WILLIAMS,

Appellee

BRIEF FOR APPELLEE

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

COMES NOW, Herman Williams, Appellee, and would show the Court the following:

I.

NATURE OF THE CASE

This is a suit for breach of a ten year employment contract. Plaintiff pled other claims as well. Motion for Summary Judgment by Defendant was granted as to the action for liable [sic] against the city and two of the three

individual Defendants and as to wrongful reprisal for a justified workers compensation claim. There was no dismissal of Plaintiff's claims for violation of due process against all Defendants'[sic], and the action of the trial court in refusing to submit issues on "due course of the law of the land" which Plaintiff tendered in substantially correct form is presented to this court in the form of a cross-point.

APPELLEE'S COUNTER-POINTS OF ERROR

COUNTER-POINT OF ERROR NO. 1

THE TRIAL COURT CORRECTLY DENIED DEFENDANT'S MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO BECAUSE ORDINANCE 35 ITSELF WAS INVALID, AND IN THE ALTERNATIVE DID NOT APPLY TO THE CONTRACT IN QUESTION.

(SF 391-392, 103-104, 118-122, 124-125, 156, 195-196)

COUNTER-POINT OF ERROR NO. 2

THE TRIAL COURT CORRECTLY FOUND THE EMPLOYMENT CONTRACT IS AMBIGUOUS.

(SF 96, 99, 115, 272, 380, 383, 384, 469, DX 2, PX 6, PX 10, PX 15)

COUNTER-POINT OF ERROR NO. 3

THE TRIAL COURT CORRECTLY ENTERED JUDGMENT ON THE JURY VERDICT AND DENIED DEFENDANT'S MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO BECAUSE TESTIMONY OF

THE CITY ATTORNEY AND MAYOR AT THE TIME THE CONTRACT WAS ENTERED INTO ESTABLISHED CIRCUMSTANCES AROUND ENTERING THE CONTRACT

(PX 4, PX 6, PX 10; DX 5)

COUNTER-POINT OF ERROR NO. 4

THE TRIAL COURT CORRECTLY SUBMITTED THE ISSUE OF DAMAGES AND IN THE ALTERNATIVE ANY ERROR WAS HARMLESS BECAUSE ELEMENTS IN MITIGATION WERE INCLUDED IN THE FIGURES RETURNED BY THE JURY.

(SF 424-429)

COUNTER-POINT OF ERROR NO. 5

THE TRIAL COURT CORRECTLY ENTERED JUDGMENT ON THE JURY VERDICT AND DENIED DEFENDANT'S MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO BECAUSE THERE WAS A MERE SCINTILLA OF CREDIBLE EVIDENCE THAT CAUSE EXISTED FOR THE TERMINATION OF THE CONTRACT.

(SF 375-376, 503-504, 514-517; DX 8)

CROSS-POINT OF ERROR NO. 1

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(SF 498-499; PX 10)

App. 5

NO. 3-93-263-CV

IN THE

COURT OF APPEALS

FOR THE

THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

AT AUSTIN

THE CITY OF GRANITE SHOALS,

Appellant

VS.

HERMAN WILLIAMS,

Appellee

MOTION FOR REHEARING

Margaret D. Kennedy
State Bar No. 11294400
316 W. 12th, Suite 307
Austin, Texas 78701
512/482-8300
Fax No. 512/482-8302

ATTORNEY FOR APPELLEE

Dated: March 14, 1994

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B. This court's attention to the vote to terminate was directed by Appellant's brief on Page 4; hense [sic], this court should have knowledge from the record that § 22.077(b)'s requirement (of a 2/3 vote if notice is not given) was not met 7

C. Since Herman Williams did have a contract of some type, he did have a property interest in his employment and a right to expect that sections of the Police Department Policy Manual which did apply to him would be used..... 8

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No. _____

IN THE
SUPREME COURT OF TEXAS

HERMAN WILLIAMS
Petitioner

v.

THE CITY OF GRANITE SHOALS
Respondent

APPLICATION FOR WRIT OF ERROR

KENNEDY & ASSOCIATE

Margaret D. Kennedy
316 W. 12th Street, Suite 307
Austin, Texas 78701
(512)482-8302
Fax No. (512)482-8302

TO THE SUPREME COURT OF TEXAS:

NAMES OF ALL PARTIES

PETITIONER: Herman Williams, represented by Margaret D. Kennedy of Kennedy & Associate, 316 W. 12th Street, Suite 307, Austin, Texas 78701. Herman Williams was Plaintiff and Appellee.

RESPONDENT: The City of Granite Shoals, represented by Diane C. Van Helden of Barish & Van Helden, 1409 West Sixth Street, Austin, Texas 78703. The City of Granite Shoals was Defendant and Appellant.

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